

SENATE BILL 2260

By Walley

AN ACT to amend Tennessee Code Annotated, Title 65,
Chapter 31, relative to utility facilities safety
enforcement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-31-102(15), is amended by deleting the subdivision.

SECTION 2. Tennessee Code Annotated, Section 65-31-102, is amended by adding the following new subdivision:

() "Emergency" means a sudden or unforeseen occurrence involving a clear and imminent danger to life, health, or property; the interruption of utility services requiring repair or restoration; or repairs to transportation facilities that require immediate action;

SECTION 3. Tennessee Code Annotated, Section 65-31-106(a)(1), is amended by deleting the language "other than an impending emergency as defined in § 65-31-102,".

SECTION 4. Tennessee Code Annotated, Section 65-31-106, is amended by deleting the language "e-mail notice" wherever it appears and substituting instead the word "electronic notice", and by deleting the language "by telephone or e-mail" in subsection (c) and substituting instead "by telephone or electronically".

SECTION 5. Tennessee Code Annotated, Section 65-31-108(h), is amended by deleting the subsection and substituting instead:

(h) Notwithstanding the requirements of subsection (g), an excavator submitting a notice of emergency excavation or demolition in accordance with § 65-31-109 may provide information that operator response is not required within two (2) hours and

provide an alternate emergency operator response time that is more than two (2) hours and less than seventy-two (72) hours. In such circumstances, the operator receiving such notice shall respond before the emergency operator response time submitted in the notice.

SECTION 6. Tennessee Code Annotated, Section 65-31-109, is amended by deleting the section and substituting instead:

(a) Compliance with the notice requirements of § 65-31-106 is not required of a person responsible for emergency excavation or demolition if such person gives, as soon as practicable, sufficient written, telephonic, or electronic notice of the emergency excavation or demolition to each operator having underground utilities located in the area or to the one-call service that serves an operator where such excavation or demolition is to be performed and requests emergency assistance from each operator so identified in locating and providing immediate protection to the operator's underground utilities.

(b) An excavator providing a misrepresentation of an emergency relative to a notice of excavation or demolition as stated in subsection (a) is subject to civil penalties under § 65-31-112.

(c) For the purposes of this section, repair or replacement of an existing traffic control device at its existing location and existing depth is considered an emergency, and compliance with the notice requirements of this section and § 65-31-106 is not required of any local or state government responding to the emergency repair or replacement of a traffic control device.

SECTION 7. Tennessee Code Annotated, Section 65-31-112(a), is amended by deleting the subsection and substituting instead:

(a) A person who violates this chapter, or the rules promulgated under this chapter, is subject to a civil penalty as follows:

(1) The violator shall pay a civil penalty in an amount set by the executive committee, not to exceed ten thousand dollars (\$10,000) per incident. In addition to a civil penalty, the executive committee may require the violator to complete a course of training concerning compliance with this chapter as determined by the executive committee;

(2) Notwithstanding subdivisions (e)(1) and (2), if a violation was the result of gross negligence or willful or wanton misconduct as determined by the executive committee, then the executive committee must require the violator to complete a course of training concerning compliance with this chapter as determined by the executive committee and pay a civil penalty in an amount set by the executive committee, not to exceed fifteen thousand dollars (\$15,000) per incident;

(3) Operators who fail to join the one-call service and utilize the services of the notification center as required by § 65-31-107 are subject to the civil penalties for violations of this chapter; and

(4) Upon issuance of a civil penalty, board investigators may make offers of settlement to the respondent that may include training concerning compliance with this chapter in lieu of payment of civil penalties.

SECTION 8. Tennessee Code Annotated, Section 65-31-117(b), is amended by deleting the subsection and substituting instead:

(b) The expenditure of monies in the underground damage prevention fund is at the discretion of the board for the following purposes:

(1) Reducing the amount of its annual operating cost to be assessed to operators for the investigative and administrative services performed by the Tennessee public utility commission;

(2) Providing grants to operators with fewer than five thousand (5,000) customers to assist the recipient in complying with the mandatory notification center requirements of this chapter. However, grants must not be used for operating expenses; and

(3) Providing public awareness, educational programs, or materials in a manner and by vendors as determined and selected by the board.

SECTION 9. Tennessee Code Annotated, Section 65-31-120, is amended by deleting the section and substituting instead:

Engaging in the activities described in the definition of "excavate" or "excavation" in § 65-31-102 does not remove or impose liability per se for damage to underground utilities.

SECTION 10. This act takes effect July 1, 2024, the public welfare requiring it.